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10/723,929	11/25/2003	David Tanner	50325-0848	9766
29989	7590	10/27/2008	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			GUYTON, PHILIP A	
2055 GATEWAY PLACE			ART UNIT	PAPER NUMBER
SUITE 550				
SAN JOSE, CA 95110			2113	
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			10/27/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/723,929	TANNER, DAVID	
	<b>Examiner</b>	<b>Art Unit</b>	
	PHILIP GUYTON	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 August 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4, 7-16, 18-24, 27-32 and 35-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 7-16, 18-24, 27-32 and 35-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 August 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-16, 18-24, 27-32, and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,874,099 to Balasubramanian et al. (hereinafter Balasubramanian) in view of U.S. Patent No. 6,970,873 to Fu et al. (hereinafter Fu).

With respect to claim 1, Balasubramanian discloses a method for diagnosing and repairing network devices on a network based on scenarios (abstract), comprising:

aggregating responses to a selectable list of queries (column 5, lines 21-24) for a plurality of scenarios on the network from a plurality of applications on the network devices (column 4, lines 30-40 and lines 54-56, column 7, lines 5-12); and

detecting modifications to the network and automatically modifying the queries to match the modifications (column 2, lines 38-40, column 4, lines 57-62, and column 8, lines 61-67);

automatically evaluating the responses to formulate corrective actions to address the scenarios for the applications (column 4, lines 40-54, column 7, lines 25-34);

wherein the step of aggregating responses further comprises:

filtering the responses according to a template; and

organizing the responses in a format that conforms to a format of the template (column 2, line 64-column 3, line 2, column 7, lines 5-11 and lines 11-34).

However, Balasubramanian does not disclose expressly wherein the step of aggregating responses further comprises:

filtering the responses according to a predetermined template of a plurality of templates; and

organizing the responses in a format that conforms to a format of the specific predetermined template.

Fu teaches a method of adding an entry to an LDAP directory tree (abstract), wherein data to be added is filtered according to a specific template of a plurality of templates (column 3, lines 24-38 and column 6, lines 35-40).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Balasubramanian by using a predetermined template from a plurality of template, as taught by Fu. A person of ordinary skill in the art would have been motivated to do so because the use of a predetermined template allows for greater organization and precise searching (Fu – column 3, lines 53-65). It also serves to ensure the LDAP directory structure is remains valid (Fu – column 3, line 66-column 4, line 5). This would have been highly desirable in Balasubramanian, where searching of data for analysis occurs (column 7, lines 25-34). Thus, it would have been obvious to a person of ordinary skill in the art to combine Balasubramanian with Fu to achieve the invention as recited in claim 1.

With respect to claim 2, Balasubramanian discloses presenting options to an operator of the network to invoke the corrective actions (column 5, lines 28-29, column 6, lines 19-29).

With respect to claim 3, Balasubramanian discloses presenting the responses to the operator of the network (column 6, lines 3-14, column 7, lines 11-13).

With respect to claim 4, Balasubramanian discloses issuing the queries to the applications in an automatically established sequence (column 2, lines 53-64).

With respect to claim 7, Balasubramanian discloses presenting the operator of the network an option to customize the queries, the plurality of the scenarios, and the corrective actions (column 4, lines 43-50, column 5, lines 25-29, column 6, lines 15-40).

With respect to claim 8, Balasubramanian discloses wherein each of the queries corresponds to one of the plurality of scenarios (column 2, lines 53-64).

With respect to claim 9, Balasubramanian discloses a method for diagnosing and repairing network devices on a network based on scenarios (abstract), comprising:

aggregating responses to a selectable list of queries (column 5, lines 21-24) for a plurality of scenarios on the network from a plurality of applications on the network devices (column 4, lines 30-40 and lines 54-56, column 7, lines 5-12), wherein the queries are issued in an automatically established sequence (column 2, lines 53-64);

detecting modifications to the network and automatically modifying the queries to match the modifications (column 2, lines 38-40, column 4, lines 57-62, and column 8, lines 61-67);

automatically evaluating the responses to formulate corrective actions to address the scenarios for the applications (column 4, lines 40-54, column 7, lines 25-34); and

presenting options to an operator of the network to invoke the corrective actions (column 5, lines 28-29, column 6, lines 19-29).

With respect to claim 10, Balasubramanian discloses detecting modifications to the network and automatically modifying the queries to match the modifications (column 4, lines 57-62, column 8, lines 61-67).

With respect to claim 11, Balasubramanian discloses presenting the operator of the network an option to customize the queries, the plurality of the scenarios, and the corrective actions (column 4, lines 43-50, column 5, lines 25-29, column 6, lines 15-40).

With respect to claim 12, Balasubramanian discloses filtering the responses according to a template; and organizing the responses in a format that conforms to a

format of the template (column 2, line 64-column 3, line 2, column 7, lines 5-11 and lines 11-34).

With respect to claim 13, Balasubramanian discloses an apparatus for managing a plurality of network devices on a network (abstract), comprising:

one or more processors (figure 12, item 1332);  
a data aggregation engine coupled to the one or more processors that aggregates responses to a selectable list of queries (column 5, lines 21-24) for a plurality of scenarios on the network from a plurality of applications on the network devices (column 4, lines 30-40 and lines 54-56, column 7, lines 5-12); and  
a sequence engine coupled to the one or more processors that automatically evaluates the responses to formulate corrective actions to address the scenarios for the applications (column 4, lines 40-54, column 7, lines 25-34);

wherein the data aggregation engine detects modifications to the network and automatically modifies the queries to match the modifications (column 2, lines 38-40, column 4, lines 57-62, and column 8, lines 61-67);

With respect to claim 14, Balasubramanian discloses a user interface, coupled to the data aggregation engine, that presents options to an operator of the network to invoke the corrective actions (column 5, lines 28-29, column 6, lines 19-29).

With respect to claim 15, Balasubramanian discloses wherein the user interface, further coupled to an aggregation display engine, presents the responses to the operator of the network (column 6, lines 3-14, column 7, lines 11-13).

With respect to claim 16, Balasubramanian discloses wherein the sequence engine automatically establishes a sequence to issue the queries to the applications (column 2, lines 53-64).

With respect to claim 18, Balasubramanian discloses wherein the data aggregation engine filters the responses according to a template; and organizes the responses in a format that conforms to a format of the template (column 2, line 64-column 3, line 2, column 7, lines 5-11 and lines 11-34).

With respect to claim 19, Balasubramanian discloses wherein the user interface further presents the operator of the network an option to customize the queries, the plurality of the scenarios, and the corrective actions (column 4, lines 43-50, column 5, lines 25-29, column 6, lines 15-40).

With respect to claim 20, Balasubramanian discloses wherein each of the queries corresponds to one of the plurality of scenarios (column 2, lines 53-64).

Claims 21-24, 27, and 28 recite a computer-readable medium for performing the method of claim 1-4, 7, and 8, and are rejected under the same rationale.

Claims 29-32, 35, and 36 recite an apparatus comprising means for performing the method of claims 1-4, 7, and 8, and are rejected under the same rationale.

With respect to claim 37, modified Balasubramanian discloses generating the predetermined template according to one or more of an operator's specifications, patterns of past retrieved data, or configurations of the network (column 7, lines 22-34 and Fu – column 3, lines 45-59).

With respect to claim 38, Balasubramanian discloses wherein the step of aggregating responses further comprises retrieving specific types of data from distinct applications of differing network devices (column 4, line 65-column 5, line 6 and column 8, lines 3-11).

### ***Response to Arguments***

4. Applicant's arguments filed 26 August 2008 have been fully considered but they are not persuasive.

Under "Issues Not Relating to Prior Art," applicant argues the rejection of claims 13-18 under 35 U.S.C. 101 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. However, as stated in Final Rejection mailed 1 July 2008, claims 13-16 and 18-20 were rejected under 35 U.S.C. 101 for claiming non-statutory subject matter. In reviewing the amendments to claim 13, the examiner has concluded that they are sufficient to overcome the 35 U.S.C. 101 rejection.

Concerning the prior art, applicant argues Balasubramanian does not disclose "automatically evaluating the responses to formulate corrective actions to address the scenarios for the applications," as recited in claims 1, 21, and 29. More specifically, applicant states Balasubramanian only discusses notifications through e-mail, telephone page, or direct phone call, which is not the same as claimed process to "formulate corrective actions." However, the examiner respectfully disagrees. Balasubramanian teaches, "*if a failure occurs anywhere within the network, the Integrated Monitoring*

*System is able to assist in pinpointing the exact location of the breakdown since it will provide needed trouble-shooting information of which elements are functioning and which are not*” (column 4, lines 13-18). Thus, in Balasubramanian, sending notifications (column 4, lines 52-54 and column 6, lines 15-40) is equivalent to the claimed “formulate corrective actions.” Applicant is reminded that according to MPEP 2111.01 [R-5], during examination, claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Additionally, the current specification has not rebutted the ordinary meaning of, nor defined the term “formulate corrective actions” beyond its plain meaning. Therefore, sending of notifications in Balasubramanian has been deemed an appropriate equivalent to the claimed “formulate corrective actions.”

Applicant additionally argues Balasubramanian does not disclose “detecting modifications to the network and automatically modifying the queries.” More specifically, applicant states Balasubramanian only discusses programs, which are not the same as claimed “queries,” and also does not disclose doing any steps automatically. However, as discussed in the previous Office action, processing queries through the monitoring programs is the central objective of Balasubramanian (column 2, lines 53-64). In other words, each monitoring program sends queries to applications, and waits for responses. Queries are internal and specific to the monitoring programs (Balasubramanian gives multiple examples: column 9, line 1-column 15, line 31 and figures 3-11). Thus, the monitoring programs control the queries.

Applicant additionally asserts: (1) Balasubramanian's Administrative GUI has no direct effect on the test signals, and does not and cannot cause any of the test signals to be modified; (2) adding and updating of programs is performed by a user only, and thus not automatic in any context, and Balasubramanian's programs are not part of the network itself; and (3) adding programs resulting in "new" test signals is not equivalent to the claimed "automatically modifying the queries." In response to (1), Balasubramanian discloses, "*the Admin GUI 110, by means of communication channel 210, allows a user to start or stop the monitoring of all processes of all types, all processes of a particular type, or a particular process of a particular type*" (column 5, lines 21-24). In this context, process refers to the monitored application. As already discussed, each monitoring program controls queries. Thus, when a user makes selections of which processes to be monitored through the Admin GUI, queries are automatically modified. Regarding (2) and (3), the examiner agrees that a user adds and updates the monitoring programs (column 2, lines 38-40, column 4, lines 57-62, and column 8, lines 61-67). But the monitoring programs are not queries. The monitoring programs control the queries. When a monitoring program is added or changed for a new or changed device, then the queries, as a whole, automatically change.

With respect to claim 38, applicant argues Balasubramanian does not teach "retrieving specific types of data from distinct applications of differing network devices." The examiner respectfully disagrees. Balasubramanian describes monitoring programs for "*messaging servers, name servers, transaction brokers, authorization services*,

*publish/subscribe systems, databases, web servers, and internally developed middleware products*“ (column 4, line 65-column 5 line 6). More specific examples of these are also given (column 9, lines 4-15). In other words, Balasubramanian teaches monitoring distinct application from differing network devices. Balasubramanian also clearly teaches retrieving specific types of data from the applications (column 9, line 54-column 15, line 22). Balasubramanian therefore teaches each and every element as recited in claim 38.

### ***Conclusion***

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP GUYTON whose telephone number is (571) 272-3807. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Robert W. Beausoliel, Jr./

Supervisory Patent Examiner, Art Unit 2113